

Before the  
**Federal Communications Commission**  
Washington, DC 20554

|   |   |                        |
|---|---|------------------------|
| In the Matter of                        | ) | EB Docket No. 07-13    |
|   | ) |                        |
| DAVID L. TITUS                          | ) | FRN No. 0002074797     |
|   | ) | File No. EB-06-IH-5048 |
|   | ) |                        |
| Amateur Radio Operator and Licensee of) |   |                        |
| Amateur Radio Station KB7ILD            | ) |                        |

To: The Commission

***PETITION FOR RECONSIDERATION***

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## **Summary**

David L. Titus seeks reconsideration of the Commission's November 6, 2014 Final Decision, FCC 14-177 ("Decision"), reversing the Initial Decision in this proceeding, FCC 10D-01 (March 9, 2010). The Decision errs in several respects. First the Decision fails to make require factual findings as required by FCC Rule Section 1.282(b)(1) and section 8(b) of the Administrative Procedures Act. Relevant factual findings necessary in this case include findings relating to the evidence of Mr. Titus's rehabilitation. The Decision largely ignores the Judge's factual findings that Mr. Titus has been rehabilitated. These factual findings were based on evidence that was uncontroverted and unrebutted.

Second, the Decision erroneously holds that the Judge did not consider all of Mr. Titus's past misconduct. To the contrary the Judge clear did consider such conduct. However, none of the conduct in question should have been considered since it was well more than 10 years prior to the designation order. Consideration of these incidents directly violates the Commission's Character Policy Statements. The Decision's reliance on incidents now more than 22 years in the past radically departs from Commission policy without explanation and is reversible error.

Third, the Decision errs in giving irrebuttable weight to the determination of a single police officer's opinion of Mr. Titus's likelihood to reoffend, despite Mr. Titus's 20 plus year history of no re-offense. The irrebuttable weight given to the officer's evaluation of Mr. Titus is particularly inappropriate when that officer's testimony and methodology was thoroughly discredited at trial including by that officer's owns

statements, including his explanation that the evaluative tool he used to support Mr. Titus's likelihood of re-offense was so unreliable that he opposes its use.

Finally, the Decision fails to credit and make findings on Mr. Titus's credibility, the testimony of a cross section of positive character witnesses, and on Mr. Titus's unblemished record of compliance with the Commission's rules and his positive contributions to the amateur radio service.

It is easy to condemn the acts Mr. Titus perpetrated in his pre-teen and teen years, even understanding the abuse he himself suffered as a child. He bears the ever present scars of the harm he inflicted on his victims just as he bears the scars of the abuse inflicted on him. Yet, for now more than 20 years now Mr. Titus has lived a lawful life. He has progressed beyond the abuse and learned to suppress the trauma that caused him to act out sexually. He has made positive steps in his life, toward appropriate relationships, among them the relationships he has made in the course of pursuing his amateur radio hobby. As Dr. Allmon testified, that hobby is a positive factor in his rehabilitating. Taking that hobby away from him will do no good. Not for him. Not for his community. Not for the amateur service. Don't take it away from him.

For all of these reasons, the Decision must be reconsidered and either reversed or vacated.

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To: The Commission

***PETITION FOR RECONSIDERATION***

David L. Titus, by counsel, and pursuant to FCC Rule Section 1.106, petitions for reconsideration of the Commission's November 6, 2014 Final Decision, FCC 14-177 ("Decision"), reversing the Initial Decision of Chief Administrative Law Judge Richard Sippel, FCC 10D-01 (March 9, 2010) ("ID"). The Decision errs in several respects. First it largely ignored the Judge's factual findings that David Titus has been rehabilitated. Second, it gives irrebuttable weight to the determination of a single police officer whose testimony and methodology was thoroughly discredited at trial including by his own statements. Finally, the Decision conflicts with prior Commission precedent without any rational explanation. Indeed, it appears the Final Decision is based solely on an emotional revulsion to the offenses occurring during Titus's teen and pre-teen years, now some 22 years in the past. For all of these reasons, the Final Decision should be reconsidered and vacated or reversed.

***I. The Decision must be vacated as violative of FCC Rule §1.282(b)(1) and Section 8(b) of the Administrative Procedures Act.***

FCC Rule §1.282 sets out the requirements of a final decision. Subsection (b)(1) requires a final decision to contain "findings of fact and conclusion, as well as the reasons or basis therefor, upon all material issues of fact, law or discretion presented on the record." The

Commission must of course obey its own rules. *Reuters, Ltd. v. FCC*, 781 F.2d 946 (1986). Here however, the requirement is not only mandated by rule, but by statute. Section 8(b) of the Administrative Procedures Act provides in pertinent part that “All decisions ... shall ... include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented on the record.” 5 U.S.C. §1007(b). The Decision is deficient in this regard and must therefore be vacated.

Nowhere does the Decision make findings or conclusions on the key factual or legal issues in the case. Rather it simply purports to identify “several errors” of the ALJ “in reaching his *ultimate finding* that [the Enforcement Bureau] did not meet its burden of proving that Titus lacks the requisite character qualifications to be a Commission licensee.” Decision at 10 (emphasis supplied). We are left to wonder whether the Decision accepts the factual findings of the Initial Decision or finds to the contrary, and if so which findings does it accept and not accept. This infirmity is not immaterial in this case for as will be seen below, the Decision determines to reverse the Initial Decision only by ignoring the multitude of record evidence that Mr. Titus has been rehabilitated and that he has no pedophilic tendencies. These findings are critical since they go directly to Mr. Titus’s claim of rehabilitation. They include the issue of Mr. Titus’s credibility. They include the credibility of Dr. Douglas Allmon, an expert psychologist who specializes in sex offender treatment and evaluation, who testified that Mr. Titus has no pedophilic tendencies. They include the credibility of the widespread group of character witnesses who testified as to Mr. Titus’s reputation in the community and his sizable contributions to amateur radio. Even more fundamentally, and as will be discussed in more detail below, the Decision makes no findings as to how Mr. Titus’s nearly 22 year-old felony conviction renders him unqualified to be a Commission licensee. Because the Decision fails to

make statutorily required findings, with respect to these and other matters, the Decision must be vacated.<sup>1</sup>

***II. Contrary to the Decision, the ID considered all of Mr. Titus's past misconduct; in doing so, however, the ID and the Decision violate the FCC's Character Policy Statements.***

The Decision holds that the Chief ALJ failed to consider two juvenile adjudications of sexual misconduct. Decision at para. 10-12. This is plainly mistaken. The fact, however, is that neither the two juvenile adjudications, nor the felony conviction occurring when Mr. Titus was 18 years-old should have been considered. Consideration of each of these matters violated the Commission's Character Policy Statements.<sup>2</sup>

***A. The ID considered all adjudications involving Mr. Titus.***

The issues in this case are to determine the effect of [Mr. Titus's] felony conviction(s) on his qualification to be and remain a Commission licensee" and "whether he is qualified to be and remain a Commission licensee." ID para. 2. The Chief ALJ found Mr. Titus has one felony conviction. Some 22 years ago, having just turned 18, Mr. Titus pled guilty to an improper communication with a minor for immoral purposes; he asked the boy to expose himself. He was sentenced to 25 months confinement in a correctional center, and assessed \$500 in penalties. ID at para. 5. That was Mr. Titus's sole felony conviction. The Decision, however, faults the Chief Judge for failing to consider two juvenile adjudications of sexual misconduct. These incidents, occurring when Mr. Titus was an even younger child, 11 and 15, however, were not the subject of any issue in this proceeding, which was focused on "felony convictions." ID at para. 3.

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<sup>1</sup> See, e.g., *Puerto Rico v. Federal Maritime Bd.*, 288 F.2d 419 (D.C. Cir. 1961); *Greensboro-High Point Airport Authority v. CAB*, 213 F.2d 517, 521-22 (D.C. Cir. 1956).

<sup>2</sup> *Character Qualifications in Broadcast Licensing*, 102 F.C.C.2d 1179 (1986), *recon. dismissed/denied*, 1 FCC Rcd 421 (1986); *Policy Regarding Character Qualifications in Broadcast Licensing*, 5 FCC Rcd 3252 (1990), *modified*, 6 FCC Rcd 3448 (1991), *further modified*, 7 FCC Rcd 6564 (1992).

The Decision purports to place great reliance on Washington State’s alleged determination of Mr. Titus’s sex offender status. Decision at para. 16. (In fact, however, as shown below, Washington State never made such a determination as to Mr. Titus; that determination was made *solely* by a single Seattle Police Detective). Yet, here it completely ignored Washington State law. R.C.W. §13.04.240 (2006) clearly provides that, “An order of court adjudicating a child delinquent or dependent under the provisions of this chapter *shall in no case be deemed a conviction of crime.*”<sup>3</sup> The Washington Supreme Court made this point crystal clear in *In re Frederick*, 93 Wash. 2d 28 (1980). Accord Attorney General Opinion 1980, No. 2 (January 11, 1980). If the Commission believes it must defer to Washington State’s determinations, it should defer to this determination. Otherwise, it would just be picking and choosing what determinations it wants to accept in order to reach the result it desires – which is readily apparent that this is exactly what it has done here.

It is true that R.C.W. §13.04.011.1 (2006) indicates that an adjudication has the same meaning as a conviction, however, that definition also makes it clear that this is only “for the purpose of sentencing under chapter 9.94A RCW,” which governs prosecutorial standards and sentencing for adult crimes. Plainly this provision did not repeal §13.04.240. Moreover, R.C.W. §13.04.011.1 was not enacted until 1997, seven years after the second and last of Mr. Titus’s juvenile adjudications. It would plainly violate the federal ex post facto clause, U.S. Constitution, art. 1, sec. 10, clause 1, to apply R.C.W. §13.04.011.1 to criminalize Mr. Titus’s juvenile adjudications retroactively. And such a result is plainly not supported by the continued

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<sup>3</sup> Emphasis supplied.

existence of R.C.W. §13.04.240. Surely, if Washington State does not consider such adjudications to be felonies, this Commission is in no position to hold otherwise.<sup>4</sup>

Citing the 1990 Character Policy Statement, the Decision recites that “evidence of any conviction for misconduct constituting a felony will be relevant to our evaluation of an applicant’s or licensee’s character.” Decision at para. 12. The Decision goes on to state that it does not matter whether Washington State “labels these juvenile crimes as felonies; it is undisputed that Titus was confined for over a year for each of these offenses.” Decision at para. 12. The problem with this reasoning is it is circular as well as inaccurate. It is just not that Washington does not label this misconduct as felonies, it does not label the conduct as criminal.

Finally, it appears lost on the Decision that the two instances of adjudicated juvenile misconduct not only occurred more than 24 years ago, but they occurred when Mr. Titus was a young child. Chief Judge Sippel acknowledged that Mr. Titus was a troubled child who himself had been molested and which caused him to act out sexually. ID at paras. 3, 5. The ID appropriately analyzed Mr. Titus’s misconduct in light of the passage of time. The Chief ALJ found that Mr. Titus’s adjudicated misconduct was extremely serious and his felony conviction of an immoral communication with a minor when he was 18 “shockingly evil.” ID at para. 22.<sup>5</sup>

So, belying the Decision’s claim, the ID did consider Mr. Titus’s past record of non-criminal sexual misconduct. Paragraph 5 of the ID, citing Bureau Exhibit 4, recounts the acts of

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<sup>4</sup> Thus, the ALJ’s conclusion at ID para. 21 that Mr. Titus had two felony adjudications at ages 11 and 15, while undercutting the Decision’s finding that he did not consider such conduct, was error since juvenile adjudications under Washington law are not criminal and felonies by definition are criminal.

<sup>5</sup> The ALJ’s use of the term, “shockingly evil,” to describe Mr. Titus’s one felony conviction was plainly over the top. Mr. Titus urged the boy to expose himself. Criminal, yes. Deviant, yes. Shockingly evil? Not hardly. The solicitation was free of violence or coercion. Mr. Titus did not lay a hand on the young man. Had the boy been 18, as was Mr. Titus, or older, the request would at most have been rude and tasteless. As it was, it was a crime and Mr. Titus has paid grievously for that crime.

sexual misconduct occurring when Mr. Titus was a child – all of which occurred more than 25 years ago.<sup>6</sup> Hence, the Decision is simply wrong in finding the Chief Judge failed to consider these long ago maledictions. Thus, the Decision must be reversed or vacated based on this error.

***B. The ALJ was correct to discount Mr. Titus's juvenile adjudications occurring now more than 24 years ago.***

Perhaps the Decision's actual complaint with the ID is that Chief Judge Sippel discounted Mr. Titus's childhood sexual misconduct due to the extended time period since those incidents occurred. The Chief ALJ was right to do so. His decision fully comports with the Commission's Character Policy Statements<sup>7</sup> and applicable precedent. The Policy Statements are unequivocal in mandating that convictions occurring more than 10 years distant should not be considered.

We find that factors which we have already determined to consider, including the passage of time since the misconduct, the frequency of misconduct, the involvement of management and the efforts to remedy the situation, are good evidence as to whether rehabilitation has occurred. No separate "rehabilitation" inquiry appears necessary, although findings regarding rehabilitation would not be inappropriate. As to the time period relevant to character inquiries, we find that, as a general matter conduct which has occurred and was or should have been discovered by the Commission, due to information within its control, prior to the current license term [footnote omitted] should not be considered, and that, even as to consideration of past conduct indicating "a flagrant disregard of the Commission's regulations and policies," a ten year limitation should apply. The "inherent inequity and practical difficulty,"<sup>8</sup> involved in requiring applicants to respond to allegations of greater age suggests that such limit be imposed.

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<sup>6</sup> The Chief ALJ also noted Mr. Titus's history of acting out sexually with peers and younger children that did not result in legal punishment. ID at para. 5. Thus, the suggestion the Chief Judge failed to consider all of Mr. Titus's history, is incorrect.

<sup>7</sup> *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 F.C.C.2d 1179 (1986) ("1986 Character Policy"), modified, *Policy Regarding Character Qualifications in Broadcast Licensing*, 5 FCC Rcd 3252 (1990) ("1990 Character Policy").

<sup>8</sup> *Quoting Kaye-Smith Enterprises*, 71 F.C.C.2d 1402, 1406-07 (1979), *recon. denied*, 46 Rad. Reg. 2d 1583 (1980).

102 F.C.C.2d at para. 105. The Commission stated in a footnote, “This time limit is consistent with our recent handling of such matters. *See Central Texas Broadcasting Company, Ltd.*, 90 FCC 2d 583, 593 (Rev. Bd. 1982), *aff’d* FCC 2d (1983).

Indeed, the Bureau conceded that the 1986 Character Policy held that misconduct should not be considered if it fell outside a ten-year period. Exceptions at 7. *See* ID at para. 19, 21, 24. Although the 1990 Character Policy broadened the range of relevant non-FCC misconduct to include all felonies, it did not disturb the 1986 Character Policy in terms of limiting the inquiry to matters occurring within a 10 year time frame. Hence, the ID’s consideration and the Decision’s emphasis on these two childhood juvenile adjudications is mystifying.<sup>9</sup>

The only justification the Decision offers for considering these two 24 plus year-old juvenile adjudications is the statement in the 1990 Policy Statement that “evidence of *any* conviction for misconduct constituting a felony will be relevant to our evaluation of an applicant’s or licensee’s character.” Decision at para. 12 (emphasis in original). But that

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<sup>9</sup> Apparently recognizing this point, the Bureau’s Exceptions claimed the passage in the 1990 Character Policy which states that the FCC will consider the “currency of the misconduct” amounted to a retrenchment from the 10 year limitation. *See* Bureau Exceptions at 7. That is not a fair reading of the 1990 Character Policy which nowhere questioned the continued validity of the 10 year cut-off period. Indeed in *Contemporary Media*, 13 FCC Rcd 14437 at n.2 (1998), the Commission specifically discussed the convictions at issue there and stated they were within the 10 year limitation period set forth in the 1986 Character Policy. That statement would suggest the Enforcement Bureau erred in designating this proceeding for hearing in the first place since Mr. Titus’s lone felony was well more than 10 years prior to the issuance of the order to show cause, a matter discussed *infra*. *See Order to Show Cause*, 22 FCC Rcd 1638 (Enf. Bur. 2007).

Nor does the Bureau’s revocation order in *Robert D. Landis*, 22 FCC Rcd 19979 (E.B. 2007), on which it relied in its Exceptions, support the Decision here. First, the Bureau was in no position to modify or overrule FCC policy statements, and the Bureau’s citing of its own unreviewed orders is hardly persuasive authority for overruling long standing policy statements. Second, a significant distinguishable difference between that case and here is that after Landis served an 11 year prison sentence he was civilly committed to a mental hospital as a violent sexual offender, *where he was resident at the time of his license revocation*. Landis thus hardly provides support for consideration of misconduct now more than 20 years in the past when Mr. Titus was a teen.

statement plainly was addressed to the range of felonious conduct, not to its currency. This would have been plain by reference to the context in which the FCC made this statement. The 1990 Policy Statement made clear that the 1986 Policy Statement “took a narrow view of the range of misconduct that should be relevant in licensing decisions covered by it.” 5 FCC Rcd at 3252. The Commission went on to explain that the 1986 Policy Statement indicated the Commission would consider only

adjudicated (a) fraudulent representations to governmental units, (b) criminal misconduct involving false statements or dishonesty, and (c) broadcast-related violations of antitrust or other laws dealing with competition. 102 FCC 2d at 1195-1197, 1200-1203. However, upon further reflection, we believe a propensity to comply with the law generally is relevant to the Commission’s public interest analysis, and that an applicant’s or licensee’s willingness to violate other laws, and in particular, to commit felonies, also bears on our confidence that an application or licensee will conform to FCC rules and policies.

*Id.* Then in the very next sentence the Commission states the sentence cited by the Decision: “Thus, evidence of any conviction for misconduct constituting a felony [footnote omitted] will be relevant to our evaluation of an applicant’s or licensee’s character.” *Id.*

Not a word in the 1990 Policy Statement suggests that this passage was meant to abrogate the 1986 Policy Statement’s holding that convictions older than 10 years would not be considered. Thus, the Decision, in considering two 24 plus year-old juvenile adjudications radically departs from the binding 1986 Policy Statement. Indeed, under the 1986 Policy Statement, the FCC considers the passage of time itself evidence of rehabilitation, stating:

we concur ... that rehabilitation is significant. We find that factors which we have already determined to consider, including the passage of time since the misconduct, the frequency of misconduct, the involvement of management and the efforts to remedy the situation, are good evidence as to whether rehabilitation has occurred. No separate “rehabilitation” inquiry appears necessary, although findings regarding rehabilitation would not be inappropriate.

102 F.C.C.2d at para. 105. If this were not clear enough, reference to the Commission's decision in *Contemporary Media, Inc.*, 13 FCC Rcd 14437 (1998), coming eight years after the 1990 Policy Statement makes crystal clear that the 10 year limitation period was not abrogated by the 1990 Policy Statement. At footnote two in that decision the Commission stated, "The crimes [in issue in that proceeding] were well within the ten year limitation applied by the Commission... Also Rice's convictions were one year prior to designation." 13 FCC Rcd at 14445 n.2. The Commission's reiteration of the efficacy of the 10 year limitation period completely eviscerates the Decision's determination to rely on juvenile adjudications occurring 24 plus years ago and well more than 10 years prior to designation of this proceeding for hearing. The Decision's departure from precedent is unexplained and irrational. It reinforces the obvious conclusion that the Decision is a result-oriented determination based on revulsion to Mr. Titus's conduct, now some 22 years in the past, and not an objective determination of the record, the evidence contained therein, and established Commission policies. Failure to vacate the Decision would undoubtedly result in reversal by the Court of Appeals for unexplained departure from precedent.

***C. This proceeding was commenced in violation of Commission policy.***

Indeed, the foregoing analysis leads inexorably to the conclusion that this proceeding should never have been designated for hearing. Here not only were both juvenile adjudications well beyond the 10 year period, but the one felony conviction at issue was more than 10 years old as well. The lone Titus felony conviction, occurring in 1993, was some 14 years in the past when this case was set for hearing in 2007. Thus, the Enforcement Bureau itself erred in designating this proceeding for hearing in the first place since Mr. Titus's one felony adjudication was well more than 10 years prior to the issuance of the order to show cause. *See Order to Show Cause*, 22 FCC Rcd 1638 (Enf. Bur. 2007). Indeed, it is readily discernable from

the record that the only reason this case was designated for hearing was the result of meddling in the Commission's processes by a United States Senator. *See* Bureau Exhibit 8. For this reason alone, the Decision should be reversed, the ID affirmed, and this proceeding terminated.

***III. The Decision is in error in finding that the ALJ required the Bureau to disprove that Mr. Titus had been rehabilitated.***

The Decision faults the ID for supposedly requiring the Bureau to prove that Mr. Titus was not rehabilitated. Decision at para. 13. A fair reading of the ID shows that is not what the ALJ did at all. Rather, the ALJ found Mr. Titus presented unrebutted evidence of his rehabilitation and the Bureau had not refuted that evidence. The Chief ALJ found (ID at para. 22) that

Mr. Titus presented expert psychological evidence that he now has no attraction to minors and there is no probability of his repeating his past misconduct in the future. This constitutes convincing proof of rehabilitation. The Bureau, however, failed to offer opposing proof of a qualified expert. So while Mr. Titus has satisfactorily proven his rehabilitation, the Bureau has not met its burden to prove non-rehabilitation by a preponderance of the evidence.

However heinous the FCC may view Mr. Titus's past actions more than 22 years and longer ago, the point of this proceeding was not to punish him. He served his punishment and all conditions of his judgment and sentence and must now bear the scarlet letter of a sex offender. Rather the point of this proceeding is whether it is in the public interest for Mr. Titus to retain the amateur radio license he has held since he was 14 (now for some 26 years). To that end, the Chief ALJ required the Bureau to meet its burden to show that Mr. Titus now lacks the requisite character qualifications to be a Commission licensee. *Id.* It was simply not enough for the Bureau to rely on distant adjudications occurring in Mr. Titus's youth to suppose he now presents a danger to children. The Bureau was required to show by the preponderance of the evidence that Mr. Titus cannot be trusted to use his amateur radio license appropriately. The ID

found that the Bureau failed to shoulder its burden to prove Mr. Titus was a continuing danger to reoffend or that his amateur radio license represented a threat to the public. *Id.*

The Decision holds that the ALJ erred in his treatment of rehabilitation by discounting the fact that Seattle police Detective Shilling had raised Mr. Titus as a Level 3 offender, at a supposed high risk to reoffend. Decision at 14. The Decision states the ALJ should have given due regard to the determination of the Washington State – despite that it was not Washington State that set Mr. Titus’s level at a Level 3 (since reduced to a level 2<sup>10</sup>) but was Detective Shilling. Moreover, the Decision faulted the Judge for discounting Detective Shilling’s reliance on the WASOFT assessment tool in determining that Mr. Titus should be a Level 3. Decision at para. 17 & n.63. Indeed, the Decision enacts an irrebuttable presumption holding that the ALJ had no authority to evaluate the reliability of the WASOFT. *Id.* at n.63. In so holding, the Decision ignores the record evidence that conclusively shows that the ALJ had good reason to question both the basis for Detective Shilling to raise Mr. Titus to a Level 3, and the reliability of the WASOFT tool Detective Shilling sought to use to justify keeping Mr. Titus at a Level 3. All of this evidence came out of Detective Shillings own mouth.

Preliminarily, the Chief ALJ had the benefit of testimony from Detective Shilling from which he could and should have concluded that amateur radio is an aid in Mr. Titus’s rehabilitation. Detective Shilling testified that after sex offenders are released back into the community that the community should provide an infrastructure that facilitates successful re-entry into the community rather than contributing to obstacles known to increase recidivism. Detective Shilling said released sex offenders need stability in their social life and need social support and friends, in other words a social network and appropriate relationships. He said

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<sup>10</sup> See King County Sheriff’s Department Website, Offender Search, available at <http://www.icrimewatch.net/offenderdetails.php?OfndrID=823417&AgencyID=54473>.

society should not make it difficult for them to find work, have appropriate associations, or place obstacles that cause instability in their lives. He said this is because instability causes one to feel out of control and that sex offenses, at least in large part, result from an offender's feeling of lack of power and control. Tr.748-52.

Detective Shilling testified he was not and never had been an amateur radio licensee. He was not familiar with FCC Rule Part 97. He had never been to a HAMFEST and was not familiar with the operation of amateur repeaters. He did not know the particulars of how the amateur service is self-policing. He did know that the FCC's amateur rules require an amateur transmitting to identify themselves by their call sign, however. Tr. 752-55.

Detective Shilling is an experienced sex offender investigator. He has investigated hundreds of sex offenses against children. Tr.756-58. He testified the Internet is a medium often used by sex offenders. This is because the offender can remain anonymous while searching for his or her victim. Detective Shilling has investigated cases where sex offenders used the Internet to seek out their victims and he said the Internet is a significant source of victim access for sex offenders. Detective Shilling understood that no FCC license is required to use the Internet. Tr. 755, 758-59. Detective Shilling has investigated not a single case where the perpetrator used amateur radio to attract the victim. In fact, he had never heard of a case of a sex offender using amateur radio to find his victim. He conceded that compared to the Internet, amateur radio was not a significant source of victim access for sex offenders. Tr. 759-63. And Detective Shilling knew of no instance of Mr. Titus using amateur radio for such a purpose. Tr. 763-64.

Detective Shilling admitted that minors are present in a variety of circumstances in which Mr. Titus might be present. He admitted that it is fair to say that virtually every human endeavor may involve minors, except for where they are specifically excluded by law, such as from liquor

stores, bars and adult entertainment establishments. And he admitted that society should not be trying to exclude sex offenders from the bulk of human activity as by doing so society would hinder the opportunity for their integration into society. Tr.764-69.

Detective Shilling testified that we would want someone evaluating a sex offender to have adequate training, such as a psychiatrist, psychologist or sex researcher. Tr. 803-04. He admitted he has no such training. Tr.801-02. Despite his lack of training or experience in social science, Detective Shilling was instrumental in the design of the Washington Sex Offender Screening Tool. (“WASOST:). He testified that the WASOST is principally based on the Minnesota Sex Offender Screening Tool (MnSOST) with certain (four) notification considerations added. The MnSOST in turn is one of a number of actuarial type tools. It provides a risk assessment score for the WASOST. Detective Shilling is familiar with a variety of other actuarial tools, but none of them are used to determine the risk assessment score rendered by the WASOST nor does the WaSOST use Phallometric testing. That is a measure of sexual arousal resulting from various auditory and visual stimuli. Tr. 806-09.

Despite his involvement in creating the WASOST, Detective Shilling testified he does not endorse its use. Tr. 801. He testified to several problems with the WASOST’s principal component, the MnSOST, including that the creator of the component, Dr. Epperson of the University of Iowa recommends against using it to classify sex offenders, that it is not actively supported, and that such tools are designed to assess the risk that sex offenders will reoffend at the time an offender is released, not years later. This is because these tools primarily or even exclusively measure static variables. Thus, they cannot evaluate the effect on recidivism of the passage of time. For example, they cannot evaluate the effect of AA or other therapies pursued after release. They cannot evaluate the effect of marriage or other significant social relationships

after release. In fact, if Mr. Titus were to be hit by a car tomorrow and rendered an inoperable quadriplegic, unable to walk or move, much less get an erection, the WASOST on the basis of static variables, would still label him a level 3 sex offender, most likely to reoffend. Tr. 809-21.

Detective Shilling agreed with the conclusion that actuarial tools like the WASOST are not appropriate for assessing decreases in risk of re-offense following an extended period (10 years or more) of successful integration into the community marked by the absence of offending behavior and an absence of behaviors associated with prior sex offenses (e.g., substance abuse, or inappropriate associations), notwithstanding how such an individual may score on the actuarial risk assessment tool. Tr. 842. In this connection, the record conclusively shows Mr. Titus has not been charged or convicted of any crime since his teen-age years, 22 years ago; has never used illegal drugs; and based on the many character references has many appropriate associations. The record is devoid of any instance of an inappropriate association since his release from confinement in 1995, 19 years ago.

Detective Shilling testified that the Washington State Institute for Public Policy ("WSIPP"), an instrumentality of the Washington State Government, as part of a 2004 legislative directive conducted a comprehensive analysis of the effectiveness of the state's sex offender policies. As part of that comprehensive analysis, WSIPP studied the End of Sentence Review Committee's sex offender notification procedures. In a January 2006 report, WSIPP made a key finding that: "The notification considerations score [of the WASOST] has little or no accuracy in predicting sex offender recidivism." And in that same report, WSIPP made the additional key finding that: the WASOST risk assessment score has little or no accuracy in predicting sex offender recidivism, although some elements have moderate predictive accuracy. A month before, in December 2005, WSIPP made a related report, and in that report it said the following:

"The notification levels determined by the ESRC do not classify sex offenders into groups that accurately reflect their risk for reoffending." Tr. 895-97. Titus Exhibits 16-17.

According to Detective Shilling, WSIPP studied the WASOST and found it wanting in several ways, including that the notification and assessment scores had little or no accuracy in predicting recidivism and the notification levels did not classify offenders into groups that accurately reflect their risk for reoffending. Tr. 897-904. Thus, contrary to the Decision's conclusion, the Bureau's own witness, the creator of the WASOST, acknowledged it was an ineffective tool for classifying the likelihood of re-offense.<sup>11</sup> Under these circumstances, it would have been plainly contrary to the evidence for the ALJ to have decided in any other manner, and it is plainly irrational for the Decision to hold that the ALJ lacked the authority to find the WASOST lacking in reliability.

With respect to the Mercer Island incident that prompted Detective Shilling to raise Mr. Titus's sex offender level to a level 3, Mr. Titus voluntarily allowed officers to search his vehicle where various items such as a flashlight and hat that said "Sheriff" were found. Tr. 868-70. Detective Shilling had no idea whether Mr. Titus ever even wore the hat. Tr. 871. Mr. Titus did not have the flashlight or the hat with him in the bathroom. Tr. 873, 878. Detective Shilling admitted it makes perfectly good sense for a motorist to have a flashlight. The type of flashlight

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<sup>11</sup> Almost all such actuarial tools as the WASOST rely on static factors which are not capable of modification even with a long history of being offense free. Thus, they are designed to gauge the risk of re-offense at the time of release from custody and are not designed to account for integration in society. *See generally*, Kemshall, Risk Assessment and Management of Known Sexual and Violent Offenders: A review of current issues (available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.121.2355&rep=rep1&type=pdf>); Hanson, The Validity of Static-99 with Older Sexual Offenders 2005-01 (available at [http://www.static99.org/pdfdocs/hanson\\_april\\_2005.pdf](http://www.static99.org/pdfdocs/hanson_april_2005.pdf)).

Mr. Titus owns is very durable.<sup>12</sup> Tr. 875. And the medallion necklace Mr. Titus had on at the time is only the size of a nickel. Tr. 879. Nothing from that incident suggests Mr. Titus was committing any crime or deviant sexual act.

After the incident on Mercer Island, Detective Shilling re-evaluated Mr. Titus. However, he did not even use the WASOST. He “did it in his head,” and sent an email to have the Seattle sex offender website updated to reflect the change in status. In that email he unprofessionally referred to Mr. Titus as a “clown.” Tr. 881. Detective Shilling also admitted to inconsistencies in the report from the officers at Mercer Island and what he had been told by them. Tr. 888-89. In these circumstances it was entirely proper for the ALJ to conclude that the Mercer Island incident provided no probative evidence that Mr. Titus was a threat to anybody. The Chief Judge thus committed no error in discounting Mr. Titus’s elevated level 3 status.

The Decision nevertheless faults Chief Judge Sippel for not blindly following the “risk assessment” performed by Detective Shilling following Mr. Titus’s 2004 contact with the Mercer Island police and Detective Shilling’s risk assessment of Mr. Titus prior to the hearing employing the WASOST screening tool. Decision at para. 15-17. The ID clearly indicates that the Chief Judge gave appropriate credence to Detective Shilling’s “risk assessments.” The ID did not find the Mercer Island matter or an unrelated traffic accident a basis to find Mr. Titus to be a danger to use his amateur radio license to reoffend against minors and the Decision makes no findings to the contrary. Particularly, the Chief Judge rightfully found Detective Shilling’s email labeling Mr. Titus a “clown” to be unprofessional and evidence of bias, undercutting his contemporaneous raising of Mr. Titus’s sex offender classification level. ID at paras. 11, 27.

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<sup>12</sup> It makes perfect sense that Mr. Titus would have a reliable flashlight considering his involvement in Amateur Radio Emergency Communications Services (“ARES”) in which affiliates are encouraged to be prepared with good reliable equipment as they are involved in assisting the public in times of emergency and disaster.

Equally unpersuasive to the Chief Judge was Detective Shilling's attempt immediately before the hearing to buttress his 2004 decision to raise Mr. Titus's sex offender level to a level 3 using the WASOST risk assessment tool. As discussed above, the failings of that "tool" were explored in depth at hearing, prompting Detective Shilling, whom the Bureau touted as an expert, to admit that he disagrees with its use and uses it only because it is the only such tool Washington State allows him to use.<sup>13</sup> The Chief Judge correctly found that the WASOST test was inappropriate to evaluate Mr. Titus because it is designed to measure risk at the time of release from incarceration, does not account for an offender's long time in the community being free of subsequent offenses, and has been found by the State of Washington itself to have little effectiveness in predicting recidivism. ID at para. 12.

Notwithstanding all these problems with Detective Shilling's risk assessment, the Decision concludes the FCC must be bound by his risk assessment, no matter what the contrary evidence. Enacting such an irrebuttable presumption defies logic and amount to a violation of Mr. Titus's due process rights.<sup>14</sup> Why hold a hearing at all if the FCC feels itself bound by a local police agency's discretionary decision no matter what the infirmities of that decision? The answer is plain: because Mr. Titus is entitled to a full and fair hearing whether his holding of an amateur license is in the public interest. The clear evidence before the Chief ALJ was that Detective Shilling raised Mr. Titus to a level 3 in a fit of self-described irritation, based on a hearsay report from Mercer Island officers that did not suggest any criminal wrongdoing.

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<sup>13</sup> The Chief Judge noted that the Washington State Institute for Public Policy found the WASOST to have little effectiveness in predicting recidivism. ID at para. 12; Titus Exhibit 17.

<sup>14</sup> Such irrebuttable presumptions have been found to violate due process in a variety of circumstances. See, e.g., *Schlesinger v. Wisconsin*, 270 U.S. 230 (1926); *Heiner v. Donnan*, 285 U.S. 312 (1932); *Wieman v. Updegraff*, 344 U.S. 183 (1952); *Elfbrandt v. Russell*, 384 U.S. 11 (1966); *Bell v. Burson*, 402 U.S. 535 (1971); *Stanley v. Illinois*, 405 U.S. 645 (1972); *Vlandis v. Kline*, 412 U.S. 441 (1973); *U.S. Dept. of Agr. v. Murry*, 413 U.S. 508 (1973); *Cleveland Bd. of Ed. v. LaFleur*, 414 U.S. 632 (1974).

Beyond the basic unfairness of that action, he failed even to ask Mr. Titus his side of the story. He then submitted written testimony to this Commission in which he said he based his risk assessment on a tool he not only knew was not designed to measure the risk of re-offense of someone who had been released from custody long ago, but the use of which tool he himself personally disagreed because of its unreliability. These facts were more than ample for the ALJ to discredit Detective Shilling's testimony. It was clear he was simply shilling for the Bureau. It was thus not error for the Chief ALJ in these circumstances to decline to blindly accept Detective Shilling's assessment that Mr. Titus might reoffend. ID at para. 27. In fact it would have been error for the ALJ to blindly accept Detective Shilling's assessment of Mr. Titus in these circumstances and it is error for the Decision to do so. The Decision must therefore be reconsidered and reversed or vacated.

***IV. The Chief Judge correctly found that the Bureau failed to meet its burden of proof.***

The Bureau's case, adopted pretty much wholesale by the Decision, comes down to the following argument: Mr. Titus as an adolescent, 18 years old and under, previously committed sex offenses against minors.<sup>15</sup> The Seattle police classified him as a level 3 sex offender after two non-arrest interactions. Detective Shilling, using a predictive tool so flawed that he himself disagrees with its use, confirmed the level 3 ranking. Mr. Titus may be in a position to interact with children in practicing his chosen hobby of amateur radio. Therefore, Mr. Titus should be seen as a threat to reoffend against children through the use of his amateur radio hobby.

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<sup>15</sup> The Decision never really addresses the highly material fact that all but one of these incidents occurred when Mr. Titus himself was a minor, and the last one came at age 18, some 22 years ago. See, e.g., Decision at paras. 11-12, 15-18; Exceptions at 8-9, 12. Our justice system is predicated on the belief that young offenders can be rehabilitated and become productive members of society. The record in this proceeding amply supports the conclusion that this is exactly what Mr. Titus has done, and he should be commended for doing so despite the impediment he carries of being labeled a sex offender and felon.

Chief Judge Sippel considered all the evidence the Bureau timely proffered, yet determined the Bureau had not proven its case by a preponderance of the evidence. The Chief Judge's evaluation of the evidence was plainly correct because the record lacks any substantial evidence to support the conclusion that Mr. Titus currently constitutes a danger to minors, much less a danger through his amateur radio license. Indeed, a glaring omission of the Decision is its failure to actually make a finding on Mr. Titus's rehabilitation.

The following facts are undisputed, yet largely ignored by the Decision. Mr. Titus has been an exemplary amateur radio operator for some 25 years who has advanced the hobby and used the hobby to promote public safety. He operates an important repeater in the Seattle area. He founded the "MicroHAMS" amateur club at Microsoft. He has been active in the amateur community and has a good reputation in the amateur community. He participates in the ARES program. There has never been any complaint whatsoever concerning Mr. Titus's amateur radio operation. He has never been cited for any violation of the FCC's rules. There was no evidence that Mr. Titus has ever used amateur radio in an attempt to attract children or commit any crime.

Since his release from custody some 20 years ago, Mr. Titus has never been charged with a crime. His sexual interest is in age appropriate mates. He has maintained stable employment and residence. His amateur radio activities have given him an appropriate support group including doctors, police officers, and emergency services personnel. His choice of character witnesses aptly illustrates this last fact. He has done all the things one would expect and want a former sex offender to do to facilitate his rehabilitation. This is confirmed by the multitude of character witnesses who attested to Mr. Titus's law abiding character and his contributions to amateur radio. It is simply error for the Decision to make no finding based on this evidence of Mr. Titus's rehabilitation. Accordingly, the Decision should be vacated or reversed.

***V. The Decision errs in not crediting Dr. Allmon's testimony of Mr. Titus's rehabilitation.***

The Decision further errs in failing to credit and make findings on the unrebutted expert testimony of Dr. Douglas Allmon, on which the ALJ heavily relied in finding that Mr. Titus has been rehabilitated and was not a threat to reoffend. Significantly, the Bureau never sought to timely provide its own psychiatric testimony. While the Decision acknowledges this testimony, its failure to make findings on it is critical error.

Dr. Allmon, a clinical assistant professor in the psychology department of the University of Washington, conducted a psychosexual deviancy evaluation of Mr. Titus. Titus Exhibit 2. Dr. Allmon holds a PhD in counseling psychology from the University of Washington and is a member of the Association for the Treatment of Sex Abusers. Dr. Allmon is also a Washington State Certified Sex Offender Treatment Specialist. His experience in the treatment of sex offenders dates back to at least 1988. Titus Exhibit 2, pp. 15-17. He has treated some 4800 sex offenders with a re-offense rate below five percent. Tr. 981.

Dr. Allmon's December 5, 2007 report was directed to whether Mr. Titus is in need of further treatment for sexual deviancy. Dr. Allmon explained that if Mr. Titus is not in need of further treatment, it follows that he is not likely to reoffend. Tr. 1019. Dr. Allmon found no evidence that Mr. Titus is predisposed currently to behave in an anomalous way, including sexually. Tr. 959. He found no evidence of pedophilia in Mr. Titus during his evaluation. Tr. 959. Mr. Titus did not attempt to influence or manipulate the outcome of the evaluation favorably. Titus Exhibit 2, p.7. Dr. Allmon examined Mr. Titus's record of sexual offense. He also delivered a battery of psychological tests: the Minnesota Multiphasic Personality Inventory-II, the Michigan Alcohol Screening Test; the Beck Depression Inventory; the Gambril & Richie Assertion Questionnaire; the PF/Clinical Analysis Questionnaire; the HansoniGizzarelliScott

Sexual Attitudes Test; and the Incomplete Sentence Blank-Modified. These tests were completed under Dr. Allmon's supervision. Dr. Allmon also conducted a structured clinical interview. Titus Exhibit 2, p.8. In addition, Dr. Allmon had a polygraph examination administered by a specialist in accordance with usual community standards. Titus Exhibit 2, p.9.

Of four measures of anomalous responses among the psychometric inventories, none implied Mr. Titus attempted to portray himself in a light more favorable than the average person. In other words he did not seek to fake good. Dr. Allmon thus concluded that Mr. Titus underwent his psychological testing frankly and honestly. This conclusion was confirmed by the polygraph examination which addressed Mr. Titus's veracity in reporting his general history, sexual history and his criminal history. Titus Exhibit 2, p.9.

The results of Mr. Titus's evaluation were indicative of normal psychological functioning. Mr. Titus was diagnosed with neither an Axis I nor an Axis II disorder. Dr. Allmon concluded Mr. Titus's pre-adolescent and adolescent pedophilia appeared to have been in remission for [then] 15 years. He stated Mr. Titus appeared skilled in use of skills designed to avoid pedophilia. He stated Mr. Titus expressed remorse for adversity he created during his adolescence related to his having acted out sexually. No evidence arose that Mr. Titus ought to undergo further treatment for sexual deviancy. He had demonstrated successfully for a [then] 15 years his ability to manage any further predisposition toward pedophilia that might arise. Nothing arose during Mr. Titus's evaluation that should be viewed as his possessing a flawed character that would suggest he should not retain his amateur radio license. Titus Exhibit 2, pp. 10-12.

In fact, Dr. Allmon testified that involvement in amateur radio would be quite excellent in avoiding isolation and that isolation would be something that a sex offender should avoid. Tr. 973-79. In Dr. Allmon's view Mr. Titus's involvement in amateur radio would be no more

troubling than other activities, in which he might join in. From his experience Dr. Allmon has never heard of amateur radio being used to attract a sex offense victim. Tr. 982.

The Chief Judge found Dr. Allmon, to be a qualified expert in treating and evaluating sex offenders. He credited Dr. Allmon expert opinion that Mr. Titus now has no predisposition to pedophilia. He concluded that Mr. Titus's past pedophilia is "unambiguously in remission." The Judge further found there was no contrary opinion of a licensed professional or other qualified expert to prove the contrary.<sup>16</sup> ID at para. 28. Thus, there was no error in the ID's Chief conclusion, based partly on Dr. Allmon's testimony, that the preponderance of the evidence shows that Mr. Titus "presents absolutely no proven risk to commit or attempt sexual misconduct involving a minor." ID at para. 28. Given this un rebutted testimony of rehabilitation, the

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<sup>16</sup> The Judge required advance expert identification. Mr. Titus followed that procedure. The Bureau designated no expert. The Bureau did offer testimony in the nature of expert testimony from Detective Shilling, after having represented that he would only be a fact witness, and Mr. Titus reluctantly acceded. Among Detective Shilling's testimony was that the predictive tool he relied upon to label Mr. Titus a level 3 sex offender is seriously flawed. That admission substantially eviscerated the Bureau's hearing strategy, that the Judge should essentially accept Detective Shilling's determination at face value. Only after the record was closed, did the Bureau seek to rebut Dr. Allmon's testimony. Its attempt to do so was feeble.

The Bureau failed to show its tendered witness was qualified to testify as an expert. He was not a licensed psychologist. He failed repeatedly to pass the state exam to become a licensed psychologist. He was not a certified sex offender treatment provider. The only credential he had was as a counselor, and he let that expire. Moreover, he did not examine Mr. Titus. He offered no critique of Dr. Allmon's methodology or his conclusions. He labeled Mr. Titus as a pedophile without any discussion of the criteria for pedophilia as set forth in the DSM IV (now DSM V), the recognized basic psychological diagnostic tool. He did not discuss the effect of Mr. Titus's then 17 year (now nearly 22 year) record of no re-offense, his undisputed preference for age appropriate sexual relationships, and Dr. Allmon's findings that Mr. Titus does not now show pedophilic tendencies. See *Opposition to Enforcement Bureau's Motion to Permit Rebuttal Testimony* at 2-6 (September 22, 2008).

Chief Judge Sippel was plainly correct to reject this late proffered testimony. He correctly saw it as an attempt to bolster the Bureau's case in chief after it had rested its case. *David Titus*, FCC 08M-51 (2008) at para. 10. Furthermore, the Chief ALJ correctly found the proffered testimony did not rebut any testimony of Dr. Allmon's, its purported purpose. *Id.* at para. 11.

Decision's refusal to make findings on and to credit Mr. Titus's rehabilitation is arbitrary and irrational. For this reason, the Decision must be reconsidered, and vacated or reversed.

**VI. *The Decision errs in failing to credit and make findings on the testimony of Mr. Titus's character witnesses.***

The Decision likewise errs in failing to credit the 10 character witnesses who testified on Mr. Titus's behalf. This case is thus to be contrasted with *Contemporary Media, Inc.*, 14 FCC Rcd 8790 at n.1 (1999), where the Commission held that the four tendered character witness statements did not discuss the licensee's character in light of his criminal activities, but only his business record. In this case, all the witnesses were aware of and discussed Mr. Titus's character in relation with his past misconduct. *See* Titus Exhibits 3-13. The ID found (at para. 15) that

[e]ach of these witnesses testified that they have known Mr. Titus for at least five years. Each attested to his good character despite his criminal past. [citation omitted] Several of these witnesses are active in Amateur Radio and approved of Mr. Titus' conduct in operating Amateur Radio. [citation omitted] There was no rebuttal. Nor was any negative character testimony or other evidence bearing on character offered.

Chief Judge Sippel held that the character evidence substantiated the evidence of Mr. Titus's rehabilitation by a preponderance of the evidence. He held that a "cross-section of character witnesses were produced, including a clergyman, a police officer, a corrections officer, a school counselor, a government contractor, a Red Cross worker, and a lab engineer, each of whom attested to Mr. Titus' successful integration into the community as a law-abiding citizen." ID at para. 25. That conclusion is entirely appropriate and supported by the evidence. The Decision's discounting of this testimony was arbitrary, irrational and contrary to the record.

**VII. *The Chief Judge properly found Mr. Titus's testimony to be credible.***

The Commission made it clear in its *Contemporary Media* decision that an ALJ's credibility determinations are entitled to credit, stating:

An ALJ's credibility findings are "entitled to great weight," *Broadcast Assoc. of Colorado*, 104 F.C.C.2d 16, 19 (1986), and his credibility determinations will be upheld unless the findings patently conflict with other record evidence. *Milton Broadcasting Co.*, 34 F.C.C.2d 1036, 1045 (1972); *KOED, Inc.*, 3 FCC Rcd 2821, 2823 (Rev. Bd. 1988), *rev. denied*, 5 FCC Rcd 1784 (1990), *recon. denied*, 6 FCC Rcd 625 (1991), *aff'd mem. sub nom. California Public Broadcasting Forum v. FCC*, 947 F.2d 505 (D.C. Cir. 1991); *see also WHW Enterprises, Inc. v. FCC*, 753 F.2d 1132, 1141 (D.C. Cir. 1985) (ALJ's credibility findings may not be upset unless reversal is supported by substantial evidence).... [T]he law accords deference to the ALJ's witness observations. *See Maria M. Ochoa*, 8 FCC Rcd 3135 (1993), *recon. denied*, 9 FCC Rcd 56, *recon. dismissed*, 10 FCC Rcd 142 (1995), *aff'd by judgment*, 98 F.3d 646 (D.C. Cir. 1996) (Table) (affirming ALJ credibility conclusion that witnesses were not biased or seeking to "get back" at applicant).

13 FCC Rcd 14437 at para. 38. Here, Chief Judge Sippel had the opportunity to observe Mr. Titus's demeanor and assess his credibility. Yet, the Decision make no findings concerning the Judge's positive demeanor findings that Mr. Titus testified credibly concerning his rehabilitation and remorse.<sup>17</sup> Given that those findings are entitled to great weight, the Decision errs in ignoring them and in finding him unqualified to be a Commission licensee.<sup>18</sup> This is all the more reason why the Decision must be reconsidered and either vacated or reversed.

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<sup>17</sup> The ID correctly rejected the Bureau's claim that Mr. Titus's failure to remember some details of his sexual misconduct and treatment, events occurring some 22 or more years ago, somehow impinged on his credibility. ID at para. 33. FCC licensees are not expected to have perfect memories. It is entirely understandable that Mr. Titus's consciousness would suppress the details of such unpleasant matters. Significantly, the Bureau was unable to point to any motive he would have to deceive concerning these matters, and even more significantly Mr. Titus openly conceded that while he did not remember many of the details the Bureau asked him to confirm, he acknowledged he was not disputing them. Hence, the Judge committed no error in finding Mr. Titus to be credible. ID at para. 33. What is incredible is that the Decision ignores the Judge's credibility findings but nevertheless finds Mr. Titus unqualified to be an amateur radio licensee simply because Detective Shilling arbitrarily set his sex offender status as a level 3.

<sup>18</sup> It was similar error for the Decision to make no findings concerning Mr. Titus's exemplary record of complying with the Commission's rules and policies. After all, that is the principal purpose of the character policy, to ensure that a licensee will comply with the rules and deal forthright with the agency. *See* 1986 Policy Statement, 5 FCC Rcd at 3252 (para. 3).

### ***VIII. Conclusion.***

As shown above, there was no reversible error in the ID's holding that Mr. Titus's amateur radio license should not be revoked. The Chief Judge properly weighed the evidence. The Chief Judge found that the evidence showed Mr. Titus's rehabilitation from the sexual misdeeds of his adolescence. He found Mr. Titus to be a credible witness. He found Dr. Allmon's expert testimony to be convincing. He properly credited Mr. Titus's now nearly 22 years of offense-free behavior. He properly credited Mr. Titus's record of compliance with the FCC's rules. He properly credited the testimony of a cross-section of the community attesting to Mr. Titus's character despite these witnesses' knowledge of his past misdeeds. The Chief Judge properly discounted the "risk assessment" testimony of Detective Shilling in light of the detective's own admission that the risk assessment tool the detective used is seriously flawed and that he actually opposes its use. Finally, the Chief Judge was correct in holding that Mr. Titus's possession of an amateur radio license would not constitute a risk of his reoffending.

For all of these reasons, the Decision should be reconsidered and either vacated or reversed and the Initial Decision, FCC 10D-01 should be affirmed.

Respectfully submitted,

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December 5, 2014

## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Reply to Exceptions to Initial Decision was served by first class mail (or email as may be shown below), postage prepaid, on or before the 5<sup>th</sup> day of December, 2014, to the following:

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